

CERTIFIED FOR PARTIAL PUBLICATION*
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE,
Plaintiff and Respondent,
v.
SCOTT R. SHEPHERD,
Defendant and Appellant.

A114880

(Sonoma County
Super. Ct. No. SCR460195)

**ORDER MODIFYING OPINION ON
THE COURT'S OWN MOTION
NO CHANGE IN JUDGMENT**

THE COURT:

On the court's own motion, the opinion filed June 8, 2007 is modified to change the paragraph found on page 8, which currently reads:

"We now apply the lessons of *Maki*, *Winson* and *Arreola* to this case. True, we are concerned with a witness's live testimony regarding a declarant's out-of-court statements rather than, as in *Winson* and *Arreola*, a declarant's prior testimony. Both, however, are forms of testimonial hearsay evidence. (*People v. Johnson, supra*, 121 Cal.App.4th at p. 1412 [testimonial evidence "is typically '[a] solemn declaration or affirmation made for the purpose of establishing or proving some fact'].) As such, we conclude the good cause standard set forth in *Winson* and reaffirmed in *Arreola* is applicable, rather than the more lenient indicia of reliability standard set forth in *Maki*. We thus consider whether that good cause standard has been met."

* Pursuant to California Rules of Court, rules 8.1105(b) and 8.1110, this opinion is certified for publication with the exception of part II.

The above paragraph is modified to remove the cite to *People v. Johnson, supra*, 121 Cal.App.4th at p. 1412 in its entirety, and replace it with a cite to *Crawford v. Washington* (2004) 541 U.S. 36, 51-52. The changed paragraph should now read:

“We now apply the lessons of *Maki*, *Winson* and *Arreola* to this case. True, we are concerned with a witness’s live testimony regarding a declarant’s out-of-court statements rather than, as in *Winson* and *Arreola*, a declarant’s prior testimony. Both, however, are forms of testimonial hearsay evidence. (*Crawford v. Washington* (2004) 541 U.S. 36, 51-52.) As such, we conclude the good cause standard set forth in *Winson* and reaffirmed in *Arreola* is applicable, rather than the more lenient indicia of reliability standard set forth in *Maki*. We thus consider whether that good cause standard has been met.”

There is no change in the Judgment.